

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF &
APPENDIX**

NOTICE OF ENTRY

Sir:--Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on Feb 25 1975

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for Prose

NOTICE OF SETTLEMENT

Sir:--Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

Index No. 75-7054 Year 19 75

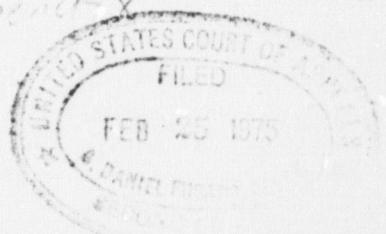
75-7054

B

P/S

Brief and

Appendix



Attorney for

Office and Post Office Address, Telephone

Prose 4981624

372 Miller Ave Brooklyn

To

Attorney(s) for

Defendants Thomas Burchill

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

PAGINATION AS IN ORIGINAL COPY

FILED 4/25/75

UNITED STATES COURT
FOR THE SECOND CIRCUIT

Nathaniel Cooper

vs

Doyle O'Glesby

Steven Davis

Mrs. Cod soul

DEPARTMENT OF SOCIAL
SERVICE CORPORATION COUNSELORSTATE OF NEW YORK
COUNTY OF NEW YORK

75-7054

DISTRICT DOCKET
73CIVIL 2915

2 Docket and Record on appeal

Rule 76 and Rule 73 Part G

Record on appeal to a court

of appeals; Statement of Points

76 as amended Dec 27, 1946 effective
March 19, 194873 as amended Dec 27, 1946 effective
March 19, 1948

Nathaniel Cooper being duly sworn according to law

deposes and says

that he has upon this day cause to be served upon

respondent here in True Copies of all paper submitted

This honorable Court and Respondent by
placing same in the hands of a duly authorized
agent of Corporation CounselAddressed as follows

Brief on Behalf of Appellants

Nathaniel Cooper on appeal

From the UNITED STATES DISTRICT COURT
For the Southern District of New York

Sworn to me this 21 day of

Respectfully Submitted

X Nathaniel Cooper

372 Miller Avenue Brooklyn N.Y. 11207

1975

Notary Seal

IDA SCHENKMAN
Notary Public, State of New York
No. 24-3486410
Qualified in Kings County
Cert. Filed in New York County
Commission Expires March 30, 1975

United States Court
of Appeals for the Second Circuit

Principal and agent 8
Master and servant

227(1)

302(2)

194 Case 73 Civil 2915

Social Security Act

§ 406(2) 401, 42 USC §§ 601

606(2) The conduct of

Social Service
conflicted with Social
Security Act

Civil Right Violation,

13.7 For Liability
of State official

13.8(3) individual as
Municipalities and
Counties and
Their officers

Nathaniel Cooper

Suing for
compensation and return
of money Replenishment and conversion

Please Take Notice That Nathaniel Cooper The Petitioner Named here in will Move This court on
The Finial Quarter of My Time To Finial an
swer To The Separation of My case By
Hon. Judge Bonsal. on Dec 6, 1974.

I Preliminary Statements 1 Corporation
Counselor and city of New York. were permitted
to come in on a Granting of the Judge
as Default could have been used
against them. Statement To fact.

Fact of the Record of Nathaniel Cooper
shown in There of Facts of Violation
Civil Rights and Brutality and
Robbery. head pain For two years.
Reward or Payment made for attempt
to Murder and Robbery and Detention 1343
Introduction Fact Showing Principle and Agent
Master and Servant Superior Respondent
Violations of Full department of
Welfare and by Comptroller Taken
Responsible (by of the act of Davies
(G)resby and Codswal) The Supervisor
made promise that they never keep the
plaintiff move for trial on March 1 I believe
as continued delay of Counsel and
legal matter.

background assault Robbery
ns Piracy 42 U.S.C 1985(3) Equal protection
law 42 U.S.C. 1981 Kurylev v. U.S.
Dept of agriculture 393 F. Supp. 1072

4 The Defendants, They have Ducked around and just about hide from the investigation of Plaintiff, none have answer in person far there conspiracy of Feb 13, 1973 and Dec, 26, 1972. I Submitted Legal Request To have Department of Social Service To notify me on the date Beating Plaintiff Nathan Cooper receiving notice from Dept. of Human Resources administration, stating fact the Court should have submitted to the appeals court that no request were made for one Steven Davis to make report to investigation department. The report made on glesby was sent to me a copy. The copy of Dept. Rulings on him were that he refuse to come answer there hear on Brutality of wrongfull assault and CONSPIRACY 42 U.S.C.A 1985(3) Equal protection of the Law. (42 U.S.C.A 1981 Kurylas v. U.S. Dept. of agriculture. IT is high Time The Three Defendants be made to answer the charges brought on appeal before this court.

If the Comptroller offices is made liable through no personal guilt but is made liable through relationship and no participating guilt the Comptroller may collect the whole amount it had to pay out on equitable principle of indemnification trustees etc v. Foster 81 Hun 147 D.C.N.Y. ¹⁹⁷⁴ 13-1(3) where primary responsibility for defective ball joint in automobile tie rod assembly belonged to automobile manufacturer and automobile dealer's degree of fault was mainly minimal in that dealer could not have discovered the defect and did nothing to create it, dealer was entitled to full indemnification over and against manufacturer with respect to judgment obtained against dealer for injuries sustained in collision caused by the defective ball joint — Langford v. Chrysler Motors Corp. 373 F Supp 1251.

6 Principal Pointes of Comptroller argument is that I should have sued them in state court I have the right to sue in the court which covers the violation at hand in this case there are many constitutional violations and the claim I possess does not state on which court I shall sue them in. It states all claim against city shall be filed with comptroller of city of New York chamber and center street 210007 municipal building D.C.Pa 1974 enacting statute governing deprivation of civil rights Congress meant to give a remedy to parties deprived of constitutional rights privileges and immunities by an official abuse of his position or discretionary powers 42 U.S.C.A § 1983 ~~§~~ Brown v. Wilson 373 F. Supp 1045

So The Order of Hon Judge Bonsal District
Judge For Southern District of New York Should
Be Reverse as The claim I have in My possess
ion STATES THAT all claims against The City Shall be
File with Comptroller IT Does NOT STATE which
Court I should sue in IT does state That IT Covers
all claims for personal Damages made by city
Vehicles and employees and IT Does give notice
That Comptroller being The head of a municipal-
a tie is The head Dept. of CITY UNIT as a CITY Body
so base on The Claim I posses against City of
New York The hon Judge Order should Be Reverse
as The Supervisor of Dept of Social Welfare
did promise To give Welfare on my Return
with Letter STating My income would Be Reduct
To \$16.93 per week This Promise were never keep
more did she miss CodSoul notifie me Through
mail That My case were Granted SO I could
Pay my Rent of \$3500 per month and Study at my
school I were in at The Time of Dec. 1972. I intend
To get action base on CITY Promise in Its Statement
in claim I have so for They have attempt To not
Even pay The \$500.00 in Doctor Bills The Bureau
of Law and Adjustment and investigation have fail To
Seattal or attempt To Settial This case so The
Petitioner herein Motion The Second Circuit To
Order That The Comptroller be sued along with
Supervisor CodSoul and Steven Davis and Doyle
Oglesby. Thank you. Order Reverse base on
Commitment made in personal injurie claim.

The District Court have the original jurisdiction of the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of any conspiracy mentioned in section 1985 of title 42 Civil Rights 13.7 for liability of state official - as of Title 42 Civil Right 1988 and 1871 Statute giving civil action for deprivation of right requirement that he must himself have committed the specific wrongful acts when supervisor personally directs subordinate to commit acts or has actual knowledge of their acts and acquiesces in them he is personally involved and is liable for his own conduct not on basis of respondent superior but because of direct personal involvement such as the supervisor codsoul in the case of one Nathaniel cooper 42 U.S.C.A § 1983; 50 PS Pa § 1102(2) 4202(a) 71 PS Pa § 66 all so why is there any confusion about principal and agent there is little difference between their liability and that of natural persons Clifford v. Press Pub Co 78 App Div 79 fraud malicious prosecution false imprisonment and defamation and the law also recognizes that a corporation may be a conspirator Corrigan v. Bobbs Merrill 228 NY 58126 NE 260 Fishkill Savings Inst. v. Bank 80 NY 162 Buffalo etc Cog v. Standard Oil 106 NY 669 Lynch v. Met. Et Ry. 90 NY 77 Garrison v. Son 207 NY 604 Willard v. Holmes 142 NY 49237 NE 480 a corporation will even be held guilty under present day law for express malice (hatred ill will or vindictiveness leading to and express intent to commit injury upon plaintiff

Base on The Facts That The City of New York
have Consented on 4/17/73 To be Sued by mailing
Plaintiff Three Copy of a Claim for personal injury
IT has been Read in To The Record on argument on
November 11, 74 IT STATE as follows all Claims against
The City shall be file with The Comptroller For
Damages made by city vehicles or employees
The claim one Nathaniel Cooper possisess does not
NOT say I Need file in The STATE Court or Federal
Court so Plaintiff is of That opinion he has The
Constitutional Right To File his claim in any
Court That is proper in This Case Plaintiff
Believe this Constitutional Right were violated
by Denieing Plaintiff into a public Build and by
Refusing To give Due prosses of The Letter put
Before The Case Worker On Dec 19, 72 She
Refuse To answer Plaintiff Then one minute
Later Plaintiff were ask To Come with officer
Oglesby To be all most kill From The assault
yes indeed, Base on The Fact That Oglesby
and Davis and Supervisor Cod soul were
acting in The Name of The STATE and For The
STATE and is cloth with The Power of The STATE
Then There acts were That indeed That of
The STATE. D.C.D.C. 1974 Statute prohibiting Racial
discrimination applies To Federal government. 42 U.S.C.
A. § 1981 - Kurylas v. U.S. Dept of agriculture

7 Substantive Testimony as To The assault and
Proof of Papers and bills Submitted To The Court.
Plaintiff Should Stand in position To win
Summary Judgment against Comptroller
and Supervisor ~~her~~ never keep her promise did
case work at stamp To Look at Letter I put be
for her on The afternoon of Dec 19, 1972 A.D. and
as to the Robbery and The District Judge has proof
The Court must understand The Corporation Counselor
Take full responsibility as to the act of The Two men
For These more The city motion for trial on and about 1/2/75
check, as plaintiff Motion for Trial March 1974 so I
Request The Second Circuit give notice to the fact
that Ogleby and Davis and Supervisor Codd have
in deed violated Many human Right. and Reverse The
order of Dec 6, 74 of Hon Judge Bonsal as at This Time
The city of New York have as of Jan 21⁷⁵ submitted
affidavited on Plaintiff Jan 21 or 22, 75 That they were
take full responsibility Principal and agent ~~is~~ Agency
Relationship is dependent on agreement of parties regarding when
agent will act for principal. Every person named in Plaintiff
complaint, have been sue herein and 138 (B) DC. III. 1974 an
action for equitable relief and Real Damage To person or
Property may be maintained against a municipality under
The 14 amendment U.S.C.A. Const Amend. 14 - CITY OF Highland
Park v. Train, 374 F Supp. 758. and all The papers before The
Court of Appeal have held the Comptroller responsible
as the claim state notarys 4/20/73 I can submitte To the
Court of appeal and medical Bill on Request. thank
you #

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
:
NATHANIEL COOPER,

Plaintiff,

4152
Memorandum
73 Civ. 2915

-against-

GUARD: DOYLE OGLESBY, Department of
Social Services; City of New York;
Corporation Counselor, Municipal Building;
Steven Davis, Guard, Department of Social
Services; and Mrs. Cudsoul, Supervisor at
Department of Social Services, 330 Jay St.,
Brooklyn, New York.

Defendants.

-----x
MEMORANDUM

BONSAL, D. J.

Plaintiff, pro se, commenced this civil rights action under 42 U.S.C. §1983 and 28 U.S.C. §1334 for recovery of compensatory and punitive damages against Doyle Oglesby, a guard for the Department of Social Services until approximately March 1973, the Department of Social Services ("DSS"), the City of New York, and the "Corporation Counselor, Municipal Building." The City of New York, DSS and the Corporation Counsel move to dismiss the complaint pursuant to F.R.Civ.P. 12 or, in the alternative, for summary judgment pursuant to F.R.Civ.P. 56.

At argument on this motion on November 11 1974, the Court granted plaintiff's motion to treat the complaint as amended to include as defendants Mrs. Cudsoul, the supervisor at the DSS office, 330 Jay Street, Brooklyn, and Guard Steven Davis. Defendants' motion shall apply with equal force to the complaint as amended as aforesaid.

The Court has considered plaintiff's deposition upon oral examination taken on October 18, 1974 and the affidavits submitted by the parties. The Court finds no material issues of fact exist as to the City, DSS, the Corporation Counsel and Mrs. Cudsoul.

From the papers submitted, it appears that plaintiff alleges that on December 19, 1972, while he was at the "Medicade Building" at 330 Jay Street, Brooklyn, for the purpose of discussing his welfare status, he was beaten without just cause, robbed and falsely arrested by Guards Oglesby and Davis. Plaintiff alleges that he was hit on the head with a night stick, rendering him unconscious and causing him to suffer five stitches in his left forehead. Plaintiff further alleges that while he was in handcuffs he was hit in the nose and mouth by Guard Davis, requiring him to undergo dental work and causing him pain and suffering. Finally, plaintiff alleges that he was robbed of \$10.00 and eight subway tokens. Plaintiff appears to seek compensatory and punitive damages in the amount of \$50,000.00.

Turning to defendants' motion, plaintiff's claims for damages under 42 U.S.C. §1983 against the City of New York, DSS and the Corporation Counsel must fail because this Court has no subject-matter jurisdiction. Neither a municipality nor its governmental agencies are "person[s]" within the meaning of section 1983.

Monroe v. Pape, 365 U.S. 167 (1961); Zuckerman v. Appellate Division, Second Department, Supreme Court of the State of New York, 421 F.2d 625 (2d Cir. 1970).

Plaintiff contends that the defendants are liable under the doctrine of respondeat superior for the acts of the Guards Oglesby and Davis. However, the rule in this circuit is that where monetary damages are sought under section 1983, the general doctrine of respondeat superior does not suffice and a showing of some personal responsibility of the defendant is required. Johnson v. Glick, 481 F.2d 1028, 1034 (2d Cir. 1973). Plaintiff's deposition shows no personal responsibility on the part of any of the defendants except Guards Oglesby and Davis. Moreover, plaintiff does not allege any actions by Mrs. Cudsoul which deprived him or caused him to be deprived of his civil rights. See Johnson v. Glick, supra, and cases cited therein. Plaintiff therefore fails to assert any cognizable federal claim against her.

Accordingly, the motion for summary judgment as to the City of New York, DSS, the Corporation Counsel and Mrs. Cudsoul

must be granted.

Neither Guard Oglesby nor Guard Davis has appeared in this action, and the file does not indicate that they have been served. See F.R.Civ.P. 4(c). The United States Marshal is directed to effect service of the summons and complaint on Guards Oglesby and Davis at their last known address, to be furnished by the Department of Social Services.

Settle order on notice.

Dated: New York, N. Y.
December 6, 1974.

DUDLEY B. BONSAL

U. S. D. J.

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE DONIGAN

Jury demand date:

Geo. De
73 CIV. 2915

D. C. Form No. 106 Rev.

TITLE OF CASE

NATHANIEL COOPER

VS.

GUARD DOYLE, OGLESBY
PT 1 DSS 7th Division
CORPORATION COUNSELOR, ROOM 1503
MUNICIPAL BUILDING, N.Y.C. N.Y. 10007
MRS. CUDSOUL, SUPVR. at DSS office
GUARD STEVEN DAVIS.

ATTORNEYS

For plaintiff:

NATHANIEL COOPER
372 Miller Avenue,
Brooklyn, N.Y. 11207

For defendant:

NORMAN REDLICH
CORPORATION COUNSEL
MUNICIPAL BUILDING, N.Y.C. 10007

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed <input checked="" type="checkbox"/>	Clerk	7-2-73 7-3-73	N Cooper	15	15 -
J.S. 6 mailed	Marshal				
Basis of Action: CIVIL RIGHTS.	Docket fee				
	Witness fees				
Action arose at:	Depositions				

COOPER VS. GUARD DOYLE

JUDGE BONSAL

73 CIV. 2915

DATE	PROCEEDINGS	Date Order Judgment M
Jul 2-73	Filed Complaint. Issued Summons.	
Jul 9, 73	Filed Order appointing Carlacy Enoch to serve summons and comp., Clerk.	
Jul 9, 73	Filed summons mmixxxpx with ret. served Jul. 9, 73.	
	Served Corporation Counsel, City of NY by Carlacy Enoch on Jul 9, 73.	
Aug. 1-73	Filed Deft. The City of NY and Norman Redlich's ANSWER.	
Aug. 8-73	Filed Deft's Notice of Motion at time and place to be fixed by Court. for ext. of time to answer.	
Nov. 21-73	Filed Memo-endorsed on deft's motion filed 8-8-73: deft. the City of New York & Norman Redlich Corporation Counsel, having filed an answer on 8-2-73, pltff's motion for a default judgment or summary judgment is denied. & deft's motion fro an order extending time to answer to 8-2-73 is granted. So ordered. Bonsal, J.	
Jul. 22/74	Filed notice of motion of pltff. re: appointment of counsel ret: 7/31/74.	
Sep. 23-74	Filed pltff's affidavit & notice of motion for civil rights.	
Nov. 6-74	Filed Deft. NY City Affdvt & Notice of Motion for an order dismissing complaint or in alternative summary judgment ret. 11/11/74.	
Nov. 6-74	Filed Daft. NY City Memorandum of Law.	
Nov. 6-74	Filed Deposition of Pltff. (mn)	
Dec. 6-74	Filed MEMORANDUM #41532: Motion for summary judgment as to the City of New York, DSS, the Corporation Counsel & Mrs. Cudsoul must be granted. Neither Guard Oglesby nor Guard Davis has appeared in this action, file does not indicate that they have been served. U.S. Marshal is directed to effect service of the summons & complaint on Guards Oglesby & Davis at their last known address, to be furnished by the Department of Social Services. Settle order on notice. Bonsal, J. m/n	
Dec. 19-74	Filed pltff's attachment to complaint.	
Dec. 31-74	Filed plaintiff's notice of appeal from decision and order judgment as to certain defendants dated Dec. 6-74. m/n to Corp Counsel of New York.	
Jan. 13-75	Filed additional summons with marshals return: Doyle Oglesby by J.R. Davis StevenDavis by Mrs Davis (Wife) Unble to serve Mrs. Codsoul, Dept. of Social Service.	Served. on 12-21-74. on 12-30-74
Jan 21-75	Filed plaintiff's motion, dated Aug. 3-73, to dismiss Saul Bernstein and Norman Redlich as parties to answer complaint.	
Jan 21-75	Filed plaintiff's motion, dated Aug. 3-73, for production of documents under Rule 34 of FRCP.	
Jan 21-75	Filed plaintiff's motion, dated Aug. 3-73, regarding certain historical facts of power of government.	
Jan 21-75	Filed plaintiff's show cause, dated Feb. 7-74, for deprivation of rights under 42 U.S.C. 1983.	
Jan 21-75	Filed plaintiff's notice of motion, dated Feb. 11-74, for appointment of counsel.	
Jan 21-75	Filed plaintiff's Notice of motion, dated Feb. 13-74, to dismiss defendants' affidavit in support of motion to dismiss complaint.	
Jan 21-75	Filed plaintiff's notice of motion, dated Mar. 1-74, for cost of damages and for attorney fees.	
Jan 21-75	Filed plaintiff's notice of motion, dated Mar. 13-74, for jury trial.	
Jan 21-75	Filed plaintiff's affidavit, dated Sept. 22-74, in support of motions submitted.	
Jan 21-75	Filed plaintiff's Affidavit, dated Oct. 7-74, for medical costs.	
Jan 21-75	Filed plaintiff's Notice of motion, dated Oct. 20-74, for deprivation of plaintiff's civil rights.	
Jan 21-75	Filed plaintiff's notice of motion, dated Nov. 8-74, for civil rights violation and for liability of state official as individuals and their officers.	
Jan 21-75	Filed plaintiff's notice of motion, dated Nov. 20-74, to amend the summary motion by plaintiff to review conspiracy of state officials.	

COOPER v. GUARD DOYLE OGLESBY, et al.

73 civ. 2915 DBB

D. C. 110 Rev. Civil Docket Continuation

STATE OF NEW YORK, COUNTY OF

The undersigned, an attorney admitted to practice in the courts of New York State,

Certification
By Attorney certifies that the within
has been compared by the undersigned with the original and found to be a true and complete copy.

Attorney's
Affirmation shows: deponent is

the attorney(s) of record for
in the within action; deponent has read the foregoing
and knows the contents thereof; the same is
true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief,
and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

Check Applicable Box

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

Nathaniel Cooper

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF *New York*

Individual
Verification the
foregoing
deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as
to those matters deponent believes it to be true.

Corporate
Verification the
foregoing
is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and
belief, and as to those matters deponent believes it to be true. This verification is made by deponent because
is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on

19

Nathaniel Cooper

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

is over 18 years of age and resides at

Affidavit
of Service
By Mail On
upon
attorney(s) for

being duly sworn, deposes and says: deponent is not a party to the action,

19 deponent served the within

in this action, at

the address designated by said attorney(s) for that purpose

by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official
depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Affidavit
of Personal
Service On
deponent served the within

19 at

upon

the

herein, by delivering a true copy thereof to h
person so served to be the person mentioned and described in said papers as the

personally. Deponent knew the
therein.

Sworn to before me on

19

The name signed must be printed beneath